

Duty to warn third parties of a threat

Introduction

Duty to warn refers to a health care provider's responsibility to breach patient confidentiality and report a situation if a violent or dangerous patient expresses intent to inflict physical or psychological harm on another person or group of persons. This duty is a result of the Tarasoff law, which was enacted in 1976 in response to a situation in which a patient killed his girlfriend after indicating to his therapist that he intended to purchase a gun and commit the crime.

Since the enactment of the Health Insurance Portability and Accountability Act, which ensures patient confidentiality, there has been an increase in discussion about the conflict of maintaining confidentiality and reporting intent to harm another. Different states may view duty to warn differently, and not all states and jurisdictions subscribe to the Tarasoff law. There is also variance in who must report the threat; therefore, it's imperative that you check with your states' legislation for guidelines regarding warning and protecting third parties as well as your facility's protocol.

Despite regional variances, the duty to warn and its exclusion from confidentiality is commonly covered in the admitting paperwork for psychiatric units.

Equipment

- Agency reporting forms

Implementation

1. Assess the patient's past and present violent tendencies.
2. Assess the context of the current situation. Does it resemble another situation in which the patient was violent, was a target of violence, or observed violence?
3. Assess recent events in the patient's life. Has the patient recently experienced crisis, loss, threats, or stress-producing events?
4. Assess the patient's threats of harm to specific victims and whether the patient is genuine in his threats. (See *Determining the severity of a threat.*)

DETERMINING THE SEVERITY OF A THREAT

Questions that may help determine the severity of a threat and whether the patient is genuine in his threat include:

- Is the patient dangerous to others?
- Is the danger the result of serious mental illness?
- Is the danger serious?
- Are the means to carry out the threat available to the patient?
- Is the danger targeted at identifiable victims?
- Is the victim accessible?

5. Identify the person being threatened and whether any safeguards are available.
6. Notify the patient's attending doctor and case manager of the threat.
7. Anticipate notification of the clinical director, director of nursing, and the hospital risk manager.
8. Document the notification of the doctor and other staff.

Documentation

Document the patient's verbal statements of intention to harm another as well as any plans to follow through on the threat. Use quotes if possible. Document the names of appropriate parties notified of the situation and the date and time they were notified. Document the action plan developed by the health care team. Document the names of potential victims and the date and time they were notified of the threat, as applicable, as well as any actions taken.

References

1. Borum, R., and Reddy, M. "Assessing Violence Risk in Tarasoff Situations: A Fact-based Model of Inquiry," *Behavioral Sciences and the Law* 19(3):375-85, 2001.
2. Combs, H. "Dangerous Patients: An Exception to the Federal Psychotherapist-Patient Privilege," *Kentucky Journal of Law* 91(2):457-76, 2002.
3. Felthous, A.R. "The Clinician's Duty to Protect Third Parties," *Psychiatric Clinics of North America* 22(1):49-60, March 1999.

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